

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**AMAN M. ADRA**

## Claimant

VS.

**SEARS ROEBUCK & COMPANY**

Respondent

AND

## KEMPER INSURANCE COMPANIES

Insurance Carrier

Docket No. 186,683

## ORDER

Claimant and respondent both appeal from an Award entered by Administrative Law Judge John D. Clark on July 23, 1996.

## APPEARANCES

Claimant appeared by his attorney, James P. Johnston of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Vincent A. Burnett of Wichita, Kansas. There were no other appearances.

## RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

### ISSUES

The Administrative Law Judge awarded benefits for a 5 percent impairment of function to the body as a whole. Claimant raises the issue of nature and extent and contends the award should be a higher work disability. Respondent, on the other hand, contends claimant has failed to prove that the injuries arose out of and in the course of employment. Respondent also contends that the award should be limited to medical only on the basis of K.S.A. 44-501(c) as interpreted by the Kansas Court of Appeals in Boucher v. Peerless Products, Inc., 21 Kan. App. 2d 977, 911 P.2d 198, *rev. denied* 260 Kan. \_\_\_\_ (1996).

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds that claimant did suffer accidental injury arising out of and in the course of her employment but benefits are limited to medical compensation only pursuant to K.S.A. 44-501(c).

Claimant began working for respondent in October 1991 as a consultant. She was responsible for receiving and processing customer orders on a computer. She worked between 12 and 24 hours a week.

On January 22, 1993, claimant began feeling a band in the area between her shoulder and elbow. She reported the problem to her supervisor within 10 days of the date she first noticed the problem. Respondent referred claimant to Minor Emergency Center. Claimant visited the Minor Emergency Center several times and was then referred for treatment by J. Mark Melhorn, M.D., an orthopedic surgeon. Dr. Melhorn diagnosed painful right shoulder, right hand/wrist tendonitis, and right lateral epicondylitis. Claimant continued to work while receiving treatment from Dr. Melhorn. On April 15, 1993, Dr. Melhorn released claimant to return to work without restrictions. On May 8, 1993, respondent closed its catalog operations in Wichita, Kansas, and laid off all of the employees in that division, including claimant.

After leaving employment for respondent, claimant took a 2½ month vacation and returned to her home in Lebanon. Claimant testified that while on vacation the symptoms disappeared and she thought the condition was healed. When she returned to the United States and engaged in minimal activity, she began having the same problems that she had before.

Respondent first contends that claimant has failed to establish that her injuries arose out of and in the course of her employment. Respondent notes that the testifying physicians, Dr. Melhorn, Dr. Jane K. Drazek, and Dr. Richard B. Lies, do not give an opinion, to a reasonable degree of medical probability, that claimant's shoulder, elbow, and wrist problems resulted from her work activities. Respondent also points out the possibility that claimant aggravated her injury by activity at home after claimant returned from

Lebanon. The Appeals Board, nevertheless, finds most likely that the current condition was from claimant's work activities. Claimant testified, in effect, that when she returned from Lebanon the moderate activity reproduced the same symptoms she had while working for respondent. From the Board's review of the record, it appears more probably true than not claimant's work caused or aggravated her injuries. The resumption of symptoms after her return from vacation is attributable to the original injuries.

Respondent next contends that even if compensable, claimant's award should be limited to medical benefits under K.S.A. 44-501(c). Respondent raised the issue at the regular hearing and in its submission letter. K.S.A. 44-501(c) provided, at the time of claimant's injury, as follows:

Except for liability for medical compensation, as provided for in K.S.A. 44-510 and amendments thereto, the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed.

Although the evidence in this case does indicate the medical providers recommended certain restrictions, it also indicates claimant did not miss any work from the time of her injury to the time of her layoff in May of 1993. The physicians providing initial treatment at the Minor Emergency Center put claimant's right hand in a splint and claimant worked for a period with her left hand only. There is also a suggestion in the record that claimant might not have been allowed to go to work at some particular time because of confusion about what the restrictions were. However, claimant clearly testified that she did not miss any time from work until the time of her layoff. Although subsequently amended, the law in effect at the time of claimant's alleged injury limits claimant's award to medical benefits only. See Osborn v. Electric Corp. of Kansas City, 23 Kan. App. 2d 868, 936 P.2d 297, rev. denied 262 Kan. \_\_\_\_ (1997).

### **AWARD**

**WHEREFORE**, the Appeals Board finds that the Award entered by Administrative Law Judge John D. Clark, dated July 23, 1996, should be, and is hereby, modified. Claimant's award is limited to medical benefits provided.

Claimant is entitled to future medical expenses on application to and approval by the Director.

The Appeals Board approves and adopts the orders by the Administrative Law Judge relating to fees and expenses.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James P. Johnston, Wichita, KS  
Vincent A. Burnett, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director